LIBRARY
SUPREME COURT, U. S.

FILED
NOV 19 1966
CLERK

Supreme Court of the United States

OCTOBER TERM, A. D. 1966

NO. 187

SAM De STEFANO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(Petition for Writ of *Certiorari* to the Supreme Court of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (312-6?6),
Counsel for Respondent.

RICHARD A. MICHAEL,
PHILIP J. ROOK,
Assistant Attorneys General,
Of Counsel.

Printed by Authority of the State of Illinois

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1966

NO. 187 MISC.

SAM De STEFANO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(Petition for Writ of *Certiorari* to the Supreme Court of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION

ARGUMENT

I.

ALTHOUGH THIS QUESTION IS NOT PROPERLY BEFORE THIS COURT, THE TRIAL COURT HEREIN WAS UNDER NO DUTY TO INQUIRE AS TO DEFENDANT'S COMPETENCY TO STAND TRIAL SINCE THERE WAS NEITHER A REQUEST BY DEFENDANT NOR ANY BONA FIDE DOUBT ON THE PART OF THE TRIAL JUDGE.

The first question presented for review by petitioner is one that was not urged or briefed below and hence is not properly before this Court. *California* v. *Taylor,* 353 U. S. 553, 557; *Kay* v. *United States,* 303 U. S. 1.

If this question were considered, however, it is clearly invalid on the merits. Petitioner relies upon *Pate* v. *Robinson,* 86 Sup. Ct. 836 and argues that the failure of the trial court to make inquiry concerning the competence of the petitioner was a constitutional violation. This argument is predicated upon the assertion that prior to trial the State moved for an order that the defendant's sanity be made the subject of a judicial inquiry.

In *Pate* v. *Robinson,* after a detailed discussion of the evidence touching upon the question of Robinson's competence, this Court concluded that the evidence introduced on Robinson's behalf entitled him to a hearing on that issue.

However, the record herein shows that some five months prior to trial the State made an oral motion for a behavior clinic examination on the basis that ". . . at some time in

the past . . . the accused did receive psychiatric treatment . . ." (Rec. pp. 36-38). The record also shows that the defendant, proceeding *pro se,* objected strenuously and the trial court denied the motion saying that he found ". . . no evidence at this time that this man needs any competency hearing." (Rec. p. 38).

Hence respondent submits that the *Robinson* case is clearly not applicable. Here there was no evidence on the issue of incompetency. Moreover petitioner had filed numerous pretrial motions and argued at length in support thereof, in addition to arguing in opposition to the State's motion for behavior clinic examination, which arguments clearly indicated his competence.

To raise the question of incompetence is the duty and responsibility of a defendant. Defendant did not raise this question at any time prior to this petition and moreover objected strongly to the State's motion. Nor did the court on its own motion have that duty since no *bona fide* doubt can be said to have arisen from the State's oral motion. The State merely asked for a behavior clinic examination, a *pro forma* motion and something substantially less than a motion for a competency hearing under Ill. Rev. Stat. 1965, ch. 38, par. 104-2, and there was simply no supporting evidence to warrant an order requiring one.

II.

THE SENTENCES SUMMARILY IMPOSED FOR DIRECT CRIMINAL CONTEMPT WERE NOT, AS A MATTER OF CONSTITUTIONAL LAW, EXCESSIVE.

For each of three separate orders of contempt of court during his trial petitioner was sentenced to the county jail for a term of one year, and the sentences were ordered

to run concurrently. The third order also imposed a fine of $2000. This, petitioner argues, "smacks" of punishment that is excessive, cruel and unusual, which punishment is proscribed by the Eighth and Fourteenth Amendments to the Constitution.

Petitioner's assertion that the sentence is excessive is supported by no valid reasons on the merits, but only on the basis that no case has been found in which a lawyer was punished to such a degree and therefore neither should a layman arguing *pro se* be so punished.

Respondent submits that either a fine or imprisonment, or both, are proper punishment in a contempt case, *People* v. *Loughran,* 2 Ill. 2d 258; *People* v. *Tavernier,* 384 Ill. 388. The punishment actually levied however rests solely in the trial court's sound discretion and that judgment should not be disturbed on appeal unless the reviewing court finds that that discretion was grossly abused. *Brown* v. *United States,* 359 U. S. 41, 52; *Hallinan* v. *United States,* 182 F. 2d 880 (9th Cir. 1950); *MacInnis* v. *United States,* 191 F. 2d 157 (9th Cir. 1951). The Appellate Court of Illinois found that the instant contempt orders recite flagrant misconduct, disrespect and open defiance of the court's authority, continued in the face of repeated warnings and findings of contempt during the trial. These contempts, the opinion continues, clearly embarrassed the court, and disrupted and defeated the prompt and fair administration of justice. *People* v. *DeStefano,* 64 Ill. App. 2d 368 at 383. The behavior punished took place in the immediate presence of the trial judge and the misconduct was professional in that it was that of a layman acting as his own lawyer. *Sacher* v. *United States,* 343 U. S. 1, 5. Clearly, respondent submits, the discretion of the trial judge was not herein abused, and therefore the sentence imposed should not be disturbed.

III.

A STATE IS NOT CONSTITUTIONALLY REQUIRED TO GRANT A JURY TRIAL IN CASES OF CRIMINAL CONTEMPT EVEN WHERE THE SENTENCE IMPOSED EXCEEDS SIX MONTHS.

Finally, although this point was not urged or briefed below before the Illinois Appellate Court, and can not be properly considered by this Court, petitioner argues by amendment to his petition that in view of *Cheff* v. *Schnackenberg*, 384 U. S. 373, the writ should be granted to make known whether a state is required to grant a jury trial in cases of criminal contempt where sentence exceeds six months.

Respondent submits, however, even if this point were to be considered, that that further ruling in *Cheff* relied upon herein, that sentences exceeding six months for criminal contempt may not be imposed by federal courts unless a jury trial has been received or waived, was rendered in the exercise of this Court's supervisory power. That ruling was not therefore a constitutional mandate incumbent upon the several states.

There is a long unbroken line of decisions both in the Supreme Court of Illinois (see *People* v. *Goss*, 10 Ill. 2d 533, 548) and this Court (see *Green* v. *United States*, 356 U. S. 165, 183) declaring and reaffirming that criminal contempts are not subject to jury trial as a matter of constitutional right. Moreover, the exercise of summary contempt power is not restricted to offenses that may be classified as petty but applies as well where the offense is a serious one. *United States* v. *Barnett*, 376 U. S. 681.

Two recent decisions of the Supreme Court of Illinois reaffirmed the theretofore consistently maintained position

that the right to trial by jury is not available in a proceeding for criminal contempt. Each decision took note of the *Cheff* case. In *People* v. *Bloom,* 35 Ill. 2d 255, the Court affirmed a twenty-four (24) month summary sentence for contempt imposed upon an attorney, and in *People ex rel. Stollar* v. *Ogilvie,* No. 39768, Supreme Court of Illinois, November 14, 1966, the Court affirmed an eighteen (18) month sentence and said in part, ". . . [W]e are not persuaded that it is either necessary or desirable to require trial by jury in criminal contempt cases and thus alter the existing law of this State . . ."

It is contended that this position is valid. By common law a jury trial was never available in the case of a direct contempt, and the fact that this Court in its supervisory capacity over federal courts requires one where the sentence is over six months, does not make such a rule a constitutional requirement binding upon the states.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the petition for writ of *certiorari* should be denied.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (346-2000),
Counsel for Respondent.

RICHARD A. MICHAEL,
PHILIP J. ROCK,
Assistant Attorneys General,
Of Counsel.

ANSWER BRIEF

Office Supreme Court, U.S.
FILED
NOV 2[illegible] 1966
JOHN F. DAVIS, CLERK

NO. 187 Misc.

IN THE

Supreme Court of the United States

OCTOBER, 1966 TERM

SAM DeSTEFANO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ANSWER OF PETITIONER TO RESPONDENT'S BRIEF

JULIUS LUCIUS ECHELES
30 North LaSalle Street
Chicago, Illinois
Attorney for Petitioner

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LA review 5-6581

IN THE

Supreme Court of the United States

OCTOBER, 1966 TERM

NO. 187 Misc.

SAM DeSTEFANO,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ANSWER OF PETITIONER TO RESPONDENT'S BRIEF

I.

The question for review was raised at the appellate level in the Illinois courts when petitioner argued that his ill-health was not properly taken into consideration by the court (See Brief of Petitioner in Appellate Court of Illinois, Nos. 50163, 50164, 50165, consolidated).

On page 19 of said brief, petitioner pointed out that "throughout all of the preliminary proceedings and throughout the entirety of the eleven days of trial, defendant was in ill health, so much so that when he made his final argument he was 'not thinking right' (A. 58 in

50162).[1] In the preliminary proceedings on arraignment, defendant was brought into court on a cot, seriously ill from abdominal surgery (A. 16 in 50162). On May 25, 1964, he asked and obtained the court's permission to argue while seated because of his previous operation (A. 16). *At that time the State filed a motion requesting a sanity hearing for the defendant* (A. 16 in 60162). At another time during the court proceedings, defendant requested permission to sit down while arguing because of his ill-health (A. 19 in 50162). On September 13, 1964, while arguing motions for a change of venue due to the waive of prejudicial publicity against him, he was given permission to argue matters while sitting in a wheel chair (A. 20 in 50162).

On October 7, 1964, he requested and obtained permission to address the court from his chair because of his illness (A. 21 in 50162).

Thus, the matters presented here for review were called to the attention of the court below. The State fails to answer the holding in *Pate* v. *Robinson*, ... U.S. ....., 15 L.ed. 815, 86 S.Ct. 836. Not only did the State move the court for a psychiatric examination before trial, it advised the court that " . . . the accused did receive psychiatric treatment" at some time in the past. (Resp. Br. 3). Because the petitioner objected to such a psychiatric examination and competency hearing, the State now argues that the court was correct in denying the hearing.

Even if the trial judge was correct at the time this ruling was made, it became obvious during the course of

---

[1] This reference is to the Abstract of Record as filed in the Appellate Court of Illinois, First District in case No. 50162, the companion case, for conduct in which petitioner was found guilty of contempt.

the trial that petitioner's erratic and bizarre behavior was abnormal in the extreme; and it *then* became the court's duty to hold a competency hearing—whether petitioner objected or not. If, in fact, the petitioner were incompetent, he could not waive any constitutional right. And as it was just that conduct and behavior during trial which gave rise to the contempt convictions resulting in a year's confinement. A *bona fide* doubt as to petitioner's competence to stand trial existed. This Court concluded in *Pate* v. *Robinson*, ... U.S. ....., 15 L.ed. 2d at 822 that, pursuant to the Illinois Revised Statutes, Chap. 38, Section 104-2 (1963), " . . . the judge on his own motion must impanel a jury and conduct a sanity hearing . . . "

As federal standards must be applied to determine whether a defendant is able to stand trial, *Noble* v. *Sigler*, 351 F.2d 673, 677 (8 Cir., 1965), this Petition should be allowed in order that the question here should be determined on the facts presented.

II.

Petitioner argues his punishment—three concurrent one year sentences each with a fine of $2,000—was excessive punishment in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

Petitioner cited cases in which attorneys punished for contemptuous conduct far more extreme than in the case at bar were, in no instance, sentenced to more than six months—and in most instances to a term much less. Petitioner had already served 87 days of his sentence before Mr. Justice Clark allowed bail pending review.[2]

---

[2] Had the bail not been granted by this Court, petitioner would have served his sentence completely; and an injustice would have been done because the matters would now be moot.

The State responds that the discretion of the trial judge was not abused; it cites three federal and two state cases. In *People* v. *Loughran*, 2 Ill. 2d 858, the lawyer was sentenced to three days only and that conviction was reversed. In *People* v. *Tavernier*, 384 Ill. 388, the contemnor was sentenced for refusing to answer questions before a grand jury and was sentenced to six months in the county jail and fined. (That sentence was reversed on other grounds). Hallinan, an attorney, was given six months for contemptuous conduct far in excess of what was revealed in the record here. *Hallinan* v. *United States*, 182 F.2d 880 (9 Cir., 1950). His co-counsel, attorney MacInnis, was sentenced to three months for his contemptuous conduct. *McInnis* v. *United States*, 191 F.2d 157 (9 Cir., 1951).

And lastly, the respondent cited *Sacher* v. *United States*, 343 U.S. 1. At pp. 9-10 of the Petition filed here, we pointed out the punishments in the *Sacher* case. Attorney Sacher, against whom were there listed 23 separate specifications of contempt, received a sentence of six months; attorney Goldstein, a sentence of six months for 18 separate specifications; attorney Crockett, a four month sentence for nine separate specifications; attorney Isserman, a four month sentence for seven separate specifications; and attorney McCabe, a thirty day sentence for six separate specifications.

And those sentences in a case where the Court of Appeals stated, *United States* v. *Sacher, et al.*, 182 F.2d 416, 420 (2 Cir., 1950) that the conduct of the lawyers were deliberately entered into in a cold and calculating manner to delay and frustrate the trial in order to provoke incidents which would result in a mistrial and to impair the health of the trial judge.

Such conduct and punishment therefore, is a far cry from the conduct of an admittedly ill person who was defending himself under extreme provocation and who, when he addressed the jury stated, " . . . I am not thinking right . . . I am upset now." (A. 58 in 50162).

III.

Cheff v. *Schnackenberg,* 384 U.S. 337, was not decided when petitioner filed his original petition on May 31, 1966. One week later, on June 6, 1966, this Court's decision was handed down.

Although this point was not briefed in the Illinois Appellate Court, there is no question but that—from the argument of respondent—the Illinois courts would reject the holding of *Cheff*. The State cited two Illinois cases decided after *Cheff,* in which "each decision took note of the *Cheff* case." (Resp. Br. 6).

It is for this reason that certiorari should be granted to make known whether this Court's decision in *Cheff* is applicable in contempt proceedings in state courts.

Cheff followed *United States* v. *Barnett,* 376 U.S. 681, 12 L.ed. 2d 23, 84 S.Ct. 984 (1964), in which it was pointed out in note 12 of the Opinion (12 L. ed. 2d 33) " . . . our cases have indicated that irrespective of the severity of the offense, the severity of the penalty imposed . . . might entitle a defendant to the benefit of a jury trial.", citing *District of Columbia* v. *Clawans,* 300 U.S. 617.

Accordingly, this Court should make known its views with respect to the procedure in contempt cases in state trials where punishment exceeds six months. It would be in accord with the endeavors of this Court to attempt a standardization of procedures in administering justice throughout the state and the federal systems.

CONCLUSION

For any or all of the foregoing reasons, petitioner respectfully prays that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

JULIUS LUCIUS ECHELES,
Attorney for Petitioner.